

territory, without the authorization of the emergency services district that provides fire-fighting services to the district immediately before the date on which the agreement takes effect.

(d) If a district enters into a strategic partnership agreement with a municipality that includes the provision of fire-fighting services under this section, the territory of the district annexed by the municipality for limited purposes and to be served by the municipality under the agreement shall be disannexed from the emergency services district in the manner provided by Section 775.022, Health and Safety Code, for territory that is annexed by a municipality for full purposes.

(e) This section does not apply to a strategic partnership agreement that is:

(1) entered into after December 31, 2006; or

(2) amended after December 31, 2006, to include the provision of fire-fighting services.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

Passed by the House on May 12, 2009: Yeas 149, Nays 0, 1 present, not voting; passed by the Senate on May 25, 2009: Yeas 30, Nays 0.

Approved June 19, 2009.

Effective June 19, 2009.

CHAPTER 672

H.B. No. 2368

AN ACT

relating to trusts.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1104.021(a), Insurance Code, is amended to read as follows:

(a) An individual may make a trust agreement providing that the proceeds of a life insurance policy insuring the individual be made payable to a trustee named as beneficiary in the policy. The validity of a trust agreement or declaration of trust that *is designated as* ~~designates~~ a beneficiary of a life insurance policy is not affected by whether any corpus of the trust exists in addition to the right of the trustee to receive insurance proceeds.

SECTION 2. Sections 112.010(c) and (c-1), Property Code, are amended to read as follows:

(c) Except as provided by Subsection (c-1) ~~[of this section]~~, the following persons may disclaim an interest in a trust created in any manner other than by will:

(1) a beneficiary, including a beneficiary of a spendthrift trust;

(2) the personal representative of an incompetent, deceased, unborn or unascertained, or minor beneficiary, with court approval by the court having jurisdiction over the personal representative; and

(3) the independent executor *or independent administrator* of a deceased beneficiary, without court approval.

(c-1) A person authorized to disclaim an interest in a trust under Subsection (c) ~~[of this section]~~ may not disclaim the interest if the person in *the person's* ~~his~~ capacity as beneficiary, personal representative, ~~or~~ independent executor, *or independent administrator* has either exercised dominion and control over the interest or accepted any benefits from the trust.

SECTION 3. Subchapter A, Chapter 113, Property Code, is amended by adding Section 113.029 to read as follows:

Sec. 113.029. DISCRETIONARY POWERS; TAX SAVINGS. (a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of terms such as “absolute,” “sole,” or “uncontrolled,” the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to Subsection (d), and unless the terms of the trust expressly indicate that a requirement provided by this subsection does not apply:

(1) a person, other than a settlor, who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee’s personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee’s individual health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1), Internal Revenue Code of 1986; and

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(c) A power the exercise of which is limited or prohibited by Subsection (b) may be exercised by a majority of the remaining trustees whose exercise of the power is not limited or prohibited by Subsection (b). If the power of all trustees is limited or prohibited by Subsection (b), the court may appoint a special fiduciary with authority to exercise the power.

(d) Subsection (b) does not apply to:

(1) a power held by the settlor’s spouse who is the trustee of a trust for which a marital deduction, as defined by Section 2056(b)(5) or 2523(e), Internal Revenue Code of 1986, was previously allowed;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under Section 2503(c), Internal Revenue Code of 1986.

SECTION 4. Section 115.013(d), Property Code, is amended to read as follows:

(d) Notice under Section 115.015 [~~115.014 of this Act~~] shall be given either to a person who will be bound by the judgment or to one who can bind that person under this section, and notice may be given to both. Notice may be given to unborn or unascertained persons who are not represented under Subdivision (1) or (2) of Subsection (c) by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

SECTION 5. The heading to Section 115.014, Property Code, is amended to read as follows:

Sec. 115.014. GUARDIAN OR ATTORNEY AD LITEM.

SECTION 6. Section 115.014, Property Code, is amended by amending Subsection (b) and adding Subsections (d) and (e) to read as follows:

(b) At any point in a proceeding a court may appoint an attorney ad litem to represent any interest that the court considers necessary, including an attorney [~~A court shall appoint a guardian~~] ad litem to defend an action under Section 114.083 [~~of this Act~~] for a beneficiary of the trust who is a minor or who has been adjudged incompetent.

(d) A guardian ad litem is entitled to reasonable compensation for services in the amount set by the court to be taxed as costs in the proceeding.

(e) An attorney ad litem is entitled to reasonable compensation for services in the amount set by the court in the manner provided by Section 114.064.

SECTION 7. Section 116.006(d), Property Code, is amended to read as follows:

(d) If the trustee of a trust reasonably believes that one or more beneficiaries of such trust will object to the manner in which the trustee intends to exercise or not exercise a discretionary power conferred by Section 116.005 [~~of this chapter~~], the trustee may petition the court having jurisdiction over the trust, and the court shall determine whether the proposed exercise or nonexercise by the trustee of such discretionary power will result in an abuse of the trustee’s discretion. The trustee shall state in such petition the basis for its

belief that a beneficiary would object. The failure or refusal of a beneficiary to sign a waiver or release is not reasonable grounds for a trustee to believe the beneficiary will object. The court may appoint one or more guardians ad litem *or attorneys ad litem* pursuant to Section 115.014 [of this subtitle]. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the trustee relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion. The trustee shall advance from the trust principal all costs incident to the judicial determination, including the reasonable attorney's fees and costs of the trustee, any beneficiary or beneficiaries who are parties to the action and who retain counsel, [and] any guardian ad litem, *and any attorney ad litem*. At the conclusion of the proceeding, the court may award costs and reasonable and necessary attorney's fees as provided in Section 114.064 [of this subtitle], including, if the court considers it appropriate, awarding part or all of such costs against the trust principal or income, awarding part or all of such costs against one or more beneficiaries or such beneficiary's or beneficiaries' share of the trust, or awarding part or all of such costs against the trustee in the trustee's individual capacity, if the court determines that the trustee's exercise or nonexercise of discretionary power would have resulted in an abuse of discretion or that the trustee did not have reasonable grounds for believing one or more beneficiaries would object to the proposed exercise or nonexercise of the discretionary power.

SECTION 8. Section 116.172(a), Property Code, is amended by amending Subdivision (2) and adding Subdivision (3) to read as follows:

(2) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer[, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock bonus, or stock ownership plan].

(3) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

SECTION 9. Section 116.172, Property Code, is amended by amending Subsection (h) and adding Subsections (i), (j), and (k) to read as follows:

(h) *Subsections (j) and (k) apply and Subsections (b) and (c) do not apply in determining the allocation of a payment made from a separate fund to:*

(1) *a trust to which an election to qualify for a marital deduction under Section 2056(b)(7), Internal Revenue Code of 1986, has been made; or*

(2) *a trust that qualifies for the marital deduction under Section 2056(b)(5), Internal Revenue Code of 1986 [If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction].*

(i) *Subsections (h), (j), and (k) do not apply if and to the extent that a series of payments would, without the application of Subsection (h), qualify for the marital deduction under Section 2056(b)(7)(C), Internal Revenue Code of 1986.*

(j) *The trustee shall determine the internal income of the separate fund for the accounting period as if the separate fund were a trust subject to this code. On request of the surviving spouse, the trustee shall demand of the person administering the separate fund that this internal income be distributed to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund, and the balance to the principal. On request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made to the trust during the accounting period from the separate fund.*

(k) *If the trustee cannot determine the internal income of the separate fund but can determine the value of the separate fund, the internal income of the separate fund shall be four percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income*

of the separate fund nor the fund's value, the internal income of the fund shall be the product of the interest rate and the present value of the expected future payments, as determined under Section 7520, Internal Revenue Code of 1986, for the month preceding the accounting period for which the computation is made.

SECTION 10. (a) The changes in law made by Section 113.029, Property Code, as added by this Act, apply only to a trust that is created or becomes irrevocable on or after September 1, 2009.

(b) Except as otherwise expressly provided by the will, the terms of the trust, or this Act, the changes in law made by this Act apply to:

(1) a trust existing or created on or after September 1, 2009;

(2) the estate of a decedent who dies before September 1, 2009, if the probate or administration of the estate is pending as of September 1, 2009; and

(3) the estate of a decedent who dies on or after September 1, 2009.

(c) For a trust existing on September 1, 2009, that was created before that date, the changes in law made by this Act apply only to an act or omission relating to the trust that occurs on or after September 1, 2009.

SECTION 11. This Act takes effect September 1, 2009.

Passed by the House on May 12, 2009: Yeas 149, Nays 0, 1 present, not voting; passed by the Senate on May 26, 2009: Yeas 31, Nays 0.

Approved June 19, 2009.

Effective September 1, 2009.

CHAPTER 673

H.B. No. 2385

AN ACT

relating to the punishment for the offense of prohibited sexual conduct.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 25.02(c), Penal Code, is amended to read as follows:

(c) An offense under this section is a felony of the third degree, unless the offense is committed under Subsection (a)(1) [~~(a)(6)~~], in which event the offense is a felony of the second degree.

SECTION 2. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 3. This Act takes effect September 1, 2009.

Passed by the House on April 28, 2009: Yeas 149, Nays 0, 1 present, not voting; passed by the Senate on May 26, 2009: Yeas 31, Nays 0.

Approved June 19, 2009.

Effective September 1, 2009.